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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-653

THE PEOPLE OF THE STATE OF MICHIGAN,
Petitioner,
vs
RICHARD BERT MOSLEY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

MEMORANDUM FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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MEMORANDUM FOR RESPONDENT IN OPPOSITION

Respondent was charged with the commission of the offense of murder in the first degree. It was charged that he killed his victim in an armed robbery or in an attempt to perpetrate an armed robbery, a felony murder.

Respondent was arrested without warrant three months after the alleged crime was committed. The arresting officer testified that he received an anonymous telephone call that several persons, including the defendant, were holding up places on the lower east side of Detroit and the caller

mentioned the name of the deceased victim in this case.

The arresting officer did not take respondent before a magistrate after arresting him at 1:00 p.m. because, he testified, he felt that he needed more information before he could apply for a warrant and because he hadn't completed his investigation.

Upon his return to police headquarters with respondent, the arresting officer questioned respondent about several robberies, not including the robbery in question in this case. During this questioning period and after he had been advised of his *Miranda* rights and signed a form acknowledging that he had been told of his *Miranda* rights, respondent declined to answer *any questions about robberies.*

After the arresting officer had completed his questioning of respondent, the officer turned respondent over to another officer of the Detroit Police Department who was assigned to the homicide section. It is unclear from the transcripts whether the arresting officer had told the second officer that respondent had declined to answer any questions about robberies.

The second homicide officer gave respondent his *Miranda* rights and respondent signed a form acknowledging that such were given to him. The officer then told respondent that his purported accomplice had confessed and implicated respondent, putting respondent on the trigger, and that respondent faced a life term. Respondent then gave a purported confession.

The Michigan Court of Appeals held that under *Miranda vArizona,* 384 US 436, 86 S Ct 1602 (1966), it is clear that once warnings have been given to a suspect, if he in any manner, at any time prior to or during questioning, indicates that he wishes to remain silent, the questioning must cease. The Michigan Court of Appeals also held that this

clear procedure prescribed by this Court in *Miranda* cannot be circumvented by the simple expedient of shuttling a person from one police officer to another for purposes of questioning and thus justifying subsequent interrogations after an election to remain silent.

The Michigan Court of Appeals was correct.

In *United States v Crisp,* 435 F2d 354, 357, (CA 7, 1970), the Court said:

> "To be effective, those safeguards [*Miranda* rights] must be fully observed, and the rights of the suspect must be jealously guarded. Not even the slightest circumvention or avoidance may be tolerated."

The Michigan Court relied upon this Court's holding in *Westover v United States,* 384 US 494, 496, 86 S Ct 1638, 1639 (1966), where this Court recognized a situation where a suspect could be questioned by a police officer after he had indicated once that he wished to remain silent. That was a situation where the accused was taken into custody by the police of a second authority and the suspect was physically removed in both time and place from the surroundings of his original interrogation and then advised of his rights a second time and given an opportunity to exercise them.

Patently, the case at bar does not fall within the example of *Westover.*

Petitioner states in his petition (p8) that when the second police officer advised respondent of his rights the second time, respondent "signed a waiver of his rights". However, petitioner states in his petition (p4) that when questioned by the first police officer, the arresting police officer, respondent signed a Constitutional Rights Certificate of Notification "acknowledging the giv-

ing of those rights," and on page 5 of his petition, petitioner states that respondent "read his rights prior to signing the notification form" which the second police officer used to explain to respondent the latter's Miranda Rights.

Hence, it is inaccurate for petitioner to state at page 8 that respondent signed a waiver of his rights.

> "Once a defendant has asserted his privilege to remain silent, a governmental claim of waiver must be scrutinized with special care." *McIntyre v New York,* 329 F. Supp 9, 13 (USDC Ed NC, 1971).

However, the real thrust of petitioner's complaint is that the Michigan Court has misread *Westover* and has established *Miranda* standards for Michigan courts which are higher than those established by this Court in *Miranda.*

The ready answer to this complaint is that the Michigan Courts are free to develop their own rules in certain areas of law providing only that they do not violate the constitutional proscriptions established by this Court.

In short, the Michigan Courts are not at liberty to establish lower standards than those established by this Court in a certain area of law, but the Michigan Courts are at liberty to establish higher standards. *Ker v California,* 374 US 23, 83 S Ct 1623 (1963).

Therefore, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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December, 1974